

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. 2:24-cv-1545-BJR

ALEXANDRO (ALEX) KIRIGIN & LAUREN
R. KIRIGIN, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

**ORDER DENYING MOTION TO
COMPEL APPRAISAL AND STAY
THE CASE¹**

I. INTRODUCTION

This proposed class action brings breach-of-contract and Washington Consumer Protection Act claims against Defendant Progressive Direct Insurance Company (“Progressive”). Alexandro (“Alex”) Kirigin and Lauren Kirigin (collectively, “Plaintiffs”) challenge Progressive’s method of determining the actual cash value of lost electric vehicles under certain auto insurance policies.

¹ Progressive has also filed a Motion to Partially Quash Third Party Subpoena and/or for a Protective Order (Dkt. No. 31), pending this Court’s resolution of the present Motion. In light of this Order, Progressive’s Motion to Partially Quash Third Party Subpoena and/or for a Protective Order is DENIED as MOOT.

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Before the Court is Progressive’s Motion to Compel Appraisal and Stay the Case, Dkt. No. 19, which seeks an order compelling Plaintiffs to participate in the appraisal process for their total loss vehicle, as outlined in their Progressive auto insurance policy. Progressive also seeks a stay of the proceedings pending conclusion of that appraisal. Having fully considered the materials and the relevant legal authorities, the Court denies the Motion.

II. BACKGROUND

Plaintiffs purchased an auto insurance policy from Progressive for a Nissan Leaf. Compl. ¶ 10, Dkt. No. 1-1. While driving the Nissan Leaf, Alex Kirigin was rear-ended. *Id.* ¶ 16. Following the accident, Plaintiffs submitted a claim to Progressive, which deemed Plaintiffs’ vehicle to be a total loss. *Id.* ¶¶ 17-18. Progressive determined that the actual cash value of the total loss vehicle was \$4,977.63. *Id.* ¶ 20. Progressive’s determination of the actual cash value of Plaintiff’s total loss vehicle was based on a Vehicle Valuation Report prepared by third-party vendor Mitchell International, Inc. (“Mitchell”). *Id.* ¶ 21. According to Plaintiffs, to estimate actual cash value for total loss vehicles like that of Plaintiffs, Mitchell starts with the asking or actual sale price of comparable vehicles. *Id.* ¶ 22. Mitchell then adjusts the value based on differences between the vehicles, such as the total mileage or differences in after-market upgraded parts. *Id.*

The Vehicle Valuation Report, which Progressive provided to Plaintiffs, identified five comparable vehicles and their list prices. *Id.* ¶ 28. Plaintiffs allege that those list prices, which Mitchell used as a starting point, reflected an undisclosed 30 percent reduction based on the Used Clean Vehicle Credit. *Id.* ¶ 29. The Used Clean Vehicle Credit is a federal tax credit that provides buyers a credit for 30 percent of the purchase price of a qualified used vehicle—up to a maximum of \$4000—when purchased from a registered dealer. *Id.* ¶ 27. To qualify, a buyer’s annual income

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1 must fall below specified thresholds. *Id.* Based on their income, Plaintiffs did not qualify for the
 2 Used Clean Vehicle Credit when they purchased their Nissan Leaf. *Id.* ¶ 30.

3 By this proposed class action, Plaintiffs challenge Progressive’s right to deduct the value of
 4 the Used Clean Vehicle Credit, and how that adjustment is made. Plaintiffs allege that Progressive’s
 5 practice of calculating the actual cash value of total loss electric vehicles by adjusting for the value
 6 of the Used Clean Vehicle Credit violates the Washington Consumer Protection Act. Specifically,
 7 Plaintiffs claim that Progressive’s actions violate WAC § 284-30-391(4). *Id.* ¶ 55. That regulation
 8 provides, among other things, that an insurer must “[b]ase all [settlement] offers on itemized and
 9 verifiable dollar amounts . . . using appropriate deductions or additions for options, mileage or
 10 condition when determining comparability.” WAC § 284-30-391(4)(b). Plaintiffs assert that the
 11 adjustment applied to their vehicle for the Used Clean Vehicle Credit was neither itemized nor
 12 verifiable, and that the law does not permit adjustments other than those explicitly set out by
 13 regulation. Compl. ¶ 55. Plaintiffs also allege that Progressive’s actions of reducing settlement
 14 offers based on the Used Clean Vehicle Credit adjustment, failing to disclose the adjustment, and
 15 applying the adjustment indiscriminately regardless of whether the insured qualifies for the credit,
 16 is an unfair business practice under RCW § 19.86.010. *Id.* ¶¶ 65-71.

17 III. DISCUSSION

18 Progressive’s current Motion seeks to compel appraisal and stay proceedings on the merits
 19 of Plaintiffs’ claims, pending an appraisal of Plaintiffs’ vehicle. The Motion relies on an appraisal
 20 provision in the subject auto insurance policy, which provides: “If we cannot agree with you on the
 21 amount of a loss, then we or you may demand an appraisal of the loss.” Def.’s Mot. at 5. The
 22 provision further outlines the process by which the insurer and insured would select appraisers, and
 23 in the event of conflicting appraisals, resolve any disputes between them by resorting to an umpire.

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1 *Id.* The provision further states that “[t]he amount of loss agreed to by both appraisers, or by one
2 appraiser and the umpire, will be binding.” *Id.*

3 Progressive argues that Plaintiffs’ challenge to the value of their total loss vehicle raises a
4 dispute about “amount of loss,” which falls squarely within the scope of the subject insurance
5 policy’s appraisal provision. *Id.* at 7-9. Plaintiffs reject Progressive’s characterization of their
6 Complaint as a disagreement about “amount of loss.” Pls.’ Resp. at 5-6, Dkt. No. 24. Plaintiffs
7 assert that their dispute is about whether Progressive acted unlawfully by including the Used Clean
8 Vehicle Credit adjustment. *Id.* Plaintiffs also contend that their dispute raises a legal question, and
9 therefore, their claims fall outside of the appraisal provision. *Id.* at 6-9.

10 This Court’s decision in *Stanikzy*—cited by both Plaintiffs and Progressive—is instructive
11 here. *Stanikzy v. Progressive Direct Ins. Co.*, No. 2:20-CV-118, 2020 WL 2800711, at *2 (W.D.
12 Wash. May 29, 2020). As in this case, the plaintiff in *Stanikzy* challenged the method Progressive
13 relied on in determining the actual cash value of a total loss vehicle. *Id.* at *1-2. Specifically,
14 *Stanikzy* challenged Progressive’s practice of adjusting values of comparable vehicles based on a
15 “projected sold adjustment,” a downward adjustment to the list price expected in a typical
16 negotiated sale. *Id.* at *1. Progressive filed a motion to compel appraisal, which raised largely the
17 same arguments as the present Motion. *Id.* In denying the motion to compel appraisal, this Court
18 concluded that the gravamen of the lawsuit was whether Progressive could legally make the
19 challenged adjustment at all, and therefore, appraisal would not obviate *Stanikzy*’s claims. *Id.*
20 at *2-3.

21 Progressive attempts to distinguish this case from *Stanikzy* by arguing that the purported
22 adjustment at issue is included as part of the list prices of comparable vehicles, rather than an
23 after-the-fact adjustment taken by Mitchell or Progressive. Def.’s Mot. at 8-9. The Court is

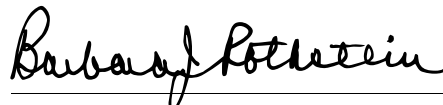
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1 unpersuaded. Progressive does not dispute that it knowingly relied on list prices of comparable
2 vehicles that had been reduced by the value of the Used Clean Vehicle Credit in determining the
3 actual cash value of Plaintiffs' total loss vehicle. For purposes of this Motion, whether that
4 adjustment was incorporated into the list price of the comparator vehicles or taken after the fact by
5 Mitchell or Progressive is a distinction without a difference. Here, as in *Stanikzy*, "there is no claim
6 that an appraiser would—or even could—choose not to take a [Used Clean Vehicle Credit]
7 deduction." *Stanikzy*, 2020 WL 2800711, at *2. Accordingly, appraisal in this case would likewise
8 not obviate Plaintiffs' claims and would be an "empty exercise." *Id.*

9 IV. CONCLUSION

10 For the foregoing reasons, Progressive's Motion to Compel Appraisal and Stay the Case
11 (Dkt. No. 19) is DENIED.

12 DATED this 20th day of March 2025.

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14 Barbara Jacobs Rothstein
15 U.S. District Court Judge

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